

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.11799 of 2010

N.Sivasankaran

.. Petitioner

Vs.

1.The Secretary to Government
Environment and Forest Department
Secretariat, Fort St. George
Chennai-9.

2.The Principal Chief Conservator of Forests
Chennai-15.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus calling for the records of the 2nd respondent in Pro.No.M1/30300/2008 dated 30.01.2009, quash the same and issue consequential directions to the respondents to permit the petitioner to peacefully retire from service on 31.05.2009 AN with all consequential retirement and pensionary benefits.

For Petitioner : Mr.M.Ravi

For Respondents: Ms.Thangavadhana Balakrishnan
Additional Government Pleader
(Forests)

O R D E R

Writ Petition is filed challenging the order of the 2nd respondent in Pro.No.M1/30300/2008, dated 30.01.2009 and issue consequential directions to the respondents to permit the petitioner to peacefully retire from service on 31.05.2009 AN with all consequential retirement and pensionary benefits.

2.Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

3.While the petitioner was working as Superintendent in the

service of the 2nd respondent, the 2nd respondent issued charge memo dated 06.07.2008 containing two charges alleging that the petitioner has made correction of his date of birth as 09.05.1954 in his service book, the record sheet and statement of family members and he has abetted alteration in the Service Register. The petitioner gave explanation dated 25.07.2008 denying the said charges. Not being satisfied with the explanation given by the petitioner, the 2nd respondent ordered domestic enquiry. The Enquiry Officer based on the documents held that the charges levelled against the petitioner were proved. The 2nd respondent issued 2nd show cause notice enclosing a copy of the enquiry report calling upon the petitioner to submit his explanation. Not being satisfied with the explanation given by the petitioner, the 2nd respondent accepted the findings of the Enquiry Officer and passed the impugned order of compulsory retirement of the petitioner. According to the petitioner, he filed appeal to the 1st respondent and the same is still pending. Under this circumstance, the petitioner has come out with the present writ petition.

4.The respondents filed counter affidavit. The learned Additional Government Pleader appearing for the respondents contended that apart from the petitioner, no body else is benefited by altering the date of birth of the petitioner. In the Service Register, the names of his family members are also corrected. If the petitioner has not corrected or altered his date of birth, he would not have mentioned the date of birth as 09.05.1954 and date of retirement as 31.05.2012 in the GPF part final withdrawal application. This clearly shows that the petitioner was aware of the correction in his Service Register. All the documents relied on by the learned counsel appearing for the 2nd respondent were made applicable to the petitioner and he did not dispute the same. In view of the documents referred to above, no witness was examined. The Enquiry Officer considering the documentary evidence, held that the charges levelled against the petitioner were proved. The 2nd respondent has given valid reason for imposing punishment of compulsory retirement. The appeal filed by the petitioner is pending in view of the pendency of the writ petition and prayed for dismissal of the writ petition.

5.The charges levelled against the petitioner are that he has made correction of his date of birth as 09.05.1954 in his service book, the record sheet and statement of family members and he has abetted alteration in the Service Register. In the domestic enquiry, no witness was examined by the 2nd respondent. It is not the case of the 2nd respondent that the petitioner had access to his Service Register or Service Register of all the employees were in the custody of the petitioner. The learned Additional Government Pleader appearing for the respondents

mainly relied on the application made by the petitioner in the GPF part final withdrawal to prove that the petitioner had knowledge of correction of his date of birth in the service book, record sheet and statement of family members. The contention of the learned counsel appearing for the petitioner that the 2nd respondent did not initiate any disciplinary proceedings against other employees and the employees, who were incharge of the custody of the records, has considerable force. The Enquiry Officer without there being any evidence to prove that the correction made by the petitioner was at his instance, on presumption held that the charges were proved. The said finding is perverse and the punishment imposed on the petitioner for compulsory retirement passed by the 2nd respondent based on such a perverse finding is invalid. In view of the same, the order of the 2nd respondent is set aside on the technical ground that the 2nd respondent did not let in oral evidence to prove the documents relied on by them to prove the charges levelled against the petitioner.

6.The writ petition is allowed. The petitioner is entitled to all the terminal benefits. The respondents are directed to settle all the terminal benefits within a period of sixteen weeks from the date of receipt of a copy of this order. No costs.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government
Environment and Forest Department
Secretariat, Fort St. George
Chennai-9.

2.The Principal Chief Conservator of Forests
Chennai-15.

+1cc to Mr.M.Ravi, Advocate, SR.No.71482
+1cc to the Special Govt.Pleader, Vide Sr.No.71840

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Kak(28/09/2019)